UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRADLEY KEITH SLEIGHTER,

Plaintiff,

Case No. 1:12-cv-1008

Honorable Judge:
GORDON J. QUIST

v.

KENT COUNTY, by and through the
KENT COUNTY JAIL ADMINISTRATION,

Defendants.

PLAINTIFF'S LEGAL BRIEF IN OPPOSITION TO SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS

IDENTIFICATION AND CLARIFICATION OF CLAIMS IN § 1983 COMPLAINT

Plaintiff received treatment, as a patient, for a chronic osteo-neurological pain condition, from Ricardo Garza MD, from February 13th, 2007 through January 16th, 2012, before being incarcerated in Kent County Correctional Facility (KCCF).

Dr. Ricardo Garza is a licensed medical doctor (MD), in good standing within the local medical community, the State of Michigan, and is licensed by the DEA to prescribe controlled substances; including, methadone.

Plaintiff received a legal prescription for methadone on January 16th, 2012 and was incarcerated in the KCCF later that day with prescription in hand (See Exhibit #1).

Methadone is approved by the US Food and Drug Administration for the treatment of moderate to severe pain. Methadone is also approved for use in "Methadone Maintenance Programs" (MMP)(see Exhibit #2), to treat opioid addiction. Plaintiff, Bradley Keith Sleighter, was incarcerated in the Kent County Correctional Facility (KCCF) from January 16th, 2012 through November 15th, 2012.

Plaintiff was denied his medication, without seeing a medical doctor to order the discontinuation of the medication Dr. Garza had just prescribed the same day he was lodged, January 16th, 2012, at KCCF.

He was informed that KCCF's policy prohibits the use of opioid medications, and said policy was created and implemented by the jail administration.

Due to being denied his medication he experienced a classical withdrawal syndrome which methadone produces upon abrupt discontinuation, and is fully described in Exhibit #3, titled: "Incarceration and opioid withdrawal: The experiences of methadone patients and out-of-treatment heroin users". This is only 10 pages of the whole report, and the Plaintiff relies on the description of in this US Government publication which details the opioid withdrawal he experienced at the hands of the Defendants.

CONCISE SUMMARY OF COMPLAINT

Plaintiff's complaint is clear, concise and simple, even though it was not as developed as his "Second Amended Complaint" will be; and upon leave of Court, the Defendants will have no doubts left as to his claim and legal standing.

For the Defendants benefit, the Plaintiff will enumerate the essential elements, but not limit them to, the complaint as follows:

1). Plaintiff had a valid legal prescription for methadone.

2). He went to jail and was denied his medication.

3). He suffered a painful withdrawal.

4). Defendant's policy prohibited him from receiving his medication.

Thus stating a claim upon which relief is plausible. He has meet the requirements to maintain his § 1983 litigation and relies on his legal standing set forth henceforth in this brief, to maintain this § 1983 litigation.

PLAINTIFF'S ARGUMENT TO MAINTAIN HIS § 1983 LITIGATION

Defendants are using legal gamesmanship attempting to manipulate the Court into a ruling in their favor by alleging a complaint that the Plaintiff never made; presenting a meritless legal theory in support of summary judgment and/or dismissal of Plaintiff's clear and concise meritorious claim(s).

Defendants are trying to use a defeasible legal defense utilizing nonexistent statements that the Plaintiff never made or inferred and also using the affirmative responses that he gave in the deposition in response to specific questions and applying them to statements he never agreed to and/or made

Plaintiff will not attempt to address every "defense" and "claim", or dissect every aspect of Defendant's Brief in Support of Summary Judgment. He will leave the "material" facts *res ipsa loquitur.*

In Defendant's Brief in Support of Summary Judgment Section I, Facts and Issues, paragraph 2 it is claimed that "Even the Plaintiff's complaint (Doc. #1), however, concedes that the Plaintiff was not denied medical care...His complaint further concedes that he was given and/or had available other medications." Plaintiff states that he never made any such concessions and upon examination of Plaintiff's complaint this will be it to *res ipsa loquitur*. In the 5th and final paragraph the Plaintiff denies this.

In section III, paragraph 1, it is stated "Instead he was offered a withdrawal protocol by medical staff which he turned down". Plaintiff objects to the introduction, as evidence, any statements he made in the deposition concerning his refusal/denial of the withdrawal protocol, and any other denial/refusal he made for any other medical treatment(s), because the Defendants are drawing a "conclusion" from this denial/refusal and only an expert witness, such as a medical specialist in this field, other than the medical staff associated with Corizon Health Inc. and/or of the Defendants, could draw these type of conclusions. Defendant's attorneys do not even know what the "withdrawal protocol" is and if it is, in fact, what it claims to be? It cannot be introduced to support their motion.

Plaintiff claims that the Defendant's medical provider does not provide an approved medical protocol and that: **The Drug Addiction Treatment Act of 2000 (DATA 2000)**, Title XXXV, Section 3502 of the Children's Health Act of 2000 (Exhibit #4), which permits physicians who meet certain qualifications to treat opioid addiction with Schedule III, IV, and V narcotic medications that have been specifically approved by the Food and Drug Administration for that indication.

Since there is only one narcotic medication approved by the FDA for the treatment of opioid addiction within the Schedules given, DATA 2000 basically refers to the use of buprenorphine [Subutex and Suboxone] for the treatment of opioid addiction. Methadone is a Schedule II narcotic approved for the same purpose within the highly regulated methadone clinic setting (see Exhibit #4).

Plaintiff also relies on the fact that this entire litigation revolves around the Defendant's policy that denied him access to the manufacture's detailed "withdrawal protocol" for the discontinuation of methadone for pain; not the Kent County Jail's "withdrawal protocol", in which he has another liberty interest at bar for his claim.(see Exhibit #2, Section 2.3).

> "**Discontinuation of Methadone for Pain.** When a patient no longer requires therapy with methadone for pain, use a gradual downward titration, of the dose every two to four days, to prevent signs and symptoms of withdrawal in the physically-dependent patient. **Do not abruptly discontinue methadone.**"

Plaintiff claims that the Defendant's policy prohibiting methadone in the jail also prohibits "buprenorphine" (Subutex and Suboxone), the only FDA approved medication for opioid addiction outside a methadone clinic. (See Exhibit #4).

Plaintiff has a legal right, protected by federal interests, to continue receiving his medication, as his personal physician sees fit. He claims that as a pretrial detainee, innocent in the eyes of the law, retains all the rights and liberties that his bailed counterpart enjoys, except those necessarily lost through the fact of confinement[i] [1]

Given this permissible deprivation of liberty, due process and its concept of fundamental fairness dictate that a pretrial detainee should not be subjected to additional punishment or loss, unless such further deprivation receives justification from a valid interest of the state. Included in the ban of punishment without due process is forced and involuntary rehabilitation which in this instance the defendant jail officials seek to impose on the plaintiff.[2] As aptly stated in Hamilton v. Love, *supra*, 328 F.Supp. at 1193: "If the conditions of pre-trial detention derive from punishment rationales, such as retribution, deterrence, or even involuntary rehabilitation, then those conditions are suspect constitutionally and must fall unless also clearly justified by the limited . . . purpose and objective of pre-trial detention . . .." [ii] [3]

Recent cases have held that pretrial confinement must be consistent with the least restrictive means available to achieve this valid governmental objective.[iii] [4]

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[1] Cudnik v. Kreiger, 395 F. Supp. 305, at 311 (quotation marks omitted).

[2] *Id*

[3] *Id.*

[4] *Id*

In Hamilton v. Love, supra, 328 F.Supp. at 1192, the court held: "It is manifestly obvious that the conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty." [iv] [5]

The state's sole interest in detaining an individual prior to trial is to assure that person's appearance at trial. A corollary to this is the state's interest in the security and internal order of its jails.[v] If the jail policy, here involved, furthers neither of the above interests and plaintiffs are shown to suffer a deprivation of liberty enjoyed by methadone addicts able to post bail, they are entitled to relief. [6]

Plaintiff's complaint (Doc. #1) clearly raises a liberty interest. He relies on the Courts clear and concise definitions given in their **6th Circuit Court of Appeals** opinion of Cudnik v. Kreiger; which if read replacing the Plaintiff's and the Defendant's name in that decision, with Sleighter v. Kent County et al., one would be lead to think it was the same § 1983 litigation.

Plaintiff is not going to try this case in pretrial filings because he cannot possibly introduce the 1000 U.S. Government documents in support of his position, nor will he be able to present the unlimited Federal Case Law supporting his position, at this time.

The jail policy of denying methadone to pretrial detainees, who were receiving treatment at a methadone program prior to incarceration, is in essence a state sanctioned measure of involuntary rehabilitation. It is fostered by governmental officials and constitutes state action under section 1983. The policy does not effectuate the state's narrow interests in pretrial confinement and causes a deprivation that is not suffered by bailed methadone addicts. The

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[5] *Id*
[6] *Id at 312*

policy thus constitutes punishment imposed without a finding of criminal culpability and, as such, is violative of fundamental due process rights. [7]

In section IV, paragraph 2, the Defendants claim "In fact, the Plaintiff has admitted that this is a dispute over the type of care and the particular medications he was offered and given." Plaintiff denies this as being true and relies on his Original Complaint as self evident as to any such alleged admission. Plaintiff further denies making any such admission(s), or similar statement(s), or admission(s), implied or otherwise, during his deposition (Defendant's Exhibit # 3), and Defendants cite no such references.

In the same paragraph, last sentence, Defendant's attorney writes "He wanted Methadone and nothing else would do in his mind." This claim draws for a conclusion as to the state of the Plaintiff's thoughts and state of mind. This conclusion is speculative and is an opinion requiring expert testimony, which can be submitted by a licensed professional who deals with such subjects, and then the Court can determine if it meets the requirements of FRE 702 Testimony by Expert Witnesses. Therefore, since the Defendant's attorney has no such authority to make such a claim, without direct evidence and being deemed an expert witness qualified by the Court, the statement is inadmissible. Hypothetically, if in fact, he had taken that position and "He wanted Methadone and nothing else would do..." does he not retain the liberties enjoyed before he was incarcerated as a pretrial detainee? Does the Defendants get to pick and chose what treatments the Plaintiff elects?

In section V, Conclusion, 1st paragraph, the Plaintiff claims its content to be misleading and untrue. Concerning the 2nd paragraph, the Plaintiff asserts that its content expresses an

[7] *Id at 313*

opinion that requires expert testimony in such professional fields as medical treatment. It is also inadmissible.

Plaintiff now relies on his deposition for the Defendant's (Defendant's Exhibit #3) to establish that they admit to the Kent County Jail's policy which prohibits the use of opioids in the jail.

Defendant's Exhibit #3, page 81, lines 8, 9, and10, Mr. Smit, the attorney, asks: "So is it fair to say that within the constraints put on them by the jail, you are satisfied with the medical care you received from Corizon while at the facility?"

This question would suggest that he was aware of "constraints put on them by the jail". This does not imply or say what the "constraints" are, but it does establish that the Defendants place constraints on its medical provider.

Then on page 93, line 3 and 4, he asks: "You can think of, I take it a decent reason as to why as a policy the jail doesn't want those drugs administered?" This question establishes that the policy in question does exist, or at least the Defendant's attorney believes it exists.

Then, lines 16 and 17 he states: "But even setting aside security, you do have addiction issues with those types of medications. It's a risky business" This further supports that there is the policy in question raised by the Plaintiff in his Complaint.

In Defendant's Exhibit #1, the "Affidavit of Captain Randy Demory" page 2, paragraph 1, he states that he is the "Jail Administrator".

. Then on page 3, paragraph 3, he states: "Consultation with those companies and professionals has taken place to make sure that medication and pain medications sufficient to

treat medical conditions that inmates may have are available for use by medical providers at the Kent County Correctional Facility."

Then the Defendant's attorneys in their Motion for Summary Judgment (Doc. #48), section III, paragraph 3, last line, he states: "Finally, the Kent County Jail Administration is not a medical practitioner or licensed medical entity..."

Plaintiff also states the exact same fact in his complaint, posing the question as to the legality of a governmental official, with no statutory authority in hand, to dictate policies that affect the access to his medical care and treatment. This raises another liberty interest, to be presented at trial.

So, what he would like to know is why Captain Randy Demory is consulting "to make sure that medications and pain medications [are] sufficient...and are available for use...at the Kent County Correctional Facility"? How is he knowledgeable enough to know what medications the inmates at KCCF need and do not need? Supra, lines 181-186, this document.

This would establish that he is involved in setting restrictions as well as to "what medications and pain medications" will **not** be available at the Kent County Correctional Facility, and this is accomplished through the jail's "policy" that is the theme and causative moving factor in the violations of the Plaintiff's civil right and the initiation of this complaint under the provisions of 42 USC § 1983.

Then, in Defendant's Exhibit #2, the Affidavit of Nasim Yacob MD, page 3, paragraph 3, he states: "The pain medications and/or other medications **available** an **allowable** for use at the

Kent County Correction Facility are sufficient to treat conditions and meet the medical needs of inmates."

His use of the words "available" and especially "allowable" reasonably implies and/or suggests that there is a "list" of these medications and/or a "policy" governing their availability and/or what pain medications and other medications are "allowable" (most restricted and/or prohibited) for use at the Kent County Correctional Facility.

Plaintiff finds it hard to believe that Dr. Yacob would, as a Doctor, encourages this and/condones this practice. Plaintiff cites Cudnik v. **392 F.Supp. 305 (1974),** Vickie CUDNIK et al., Plaintiffs,**v. Ralph KREIGER et al., Defendants.** No. C74-275, **United States District Court, N. D. Ohio, E. D.** July 16, 1974, at 308; "But since the sheriff, who is charged with policy making, is opposed to the use of methadone at the county jail, Dr. Besst has no medical choice of treatment. He can only offer his "withdrawal kit" to afford some measure of relief to withdrawing addicts. Dr. Besst is also of the opinion that jail confinement provides an excellent opportunity to *require* an addict to withdraw. When asked whether the State ought to force withdrawal on a pretrial detainee, he replied: "Whereas they may not be guilty of the charge that they are there for, they have admitted guilt to addiction . . . and I think that they should have withdrawal and rehabilitation enforced upon them as a matter of the State's obligation."

The Defendant's policy has prohibited its inmate medical doctor, the opportunity to either approve of or deny the use of approved methods treating opioid addiction and withdrawal. Giving him the benefit of doubt, it should be assumed that he would make the right choice and not perpetuate a grave injustice and violation of human rights. This is more than the Defendants have done, since they do not have confidence enough in their doctor to let him determine what is

best. Unfortunately, it is now too late for them to let him try because the Defendant's policy has set the stage for their being hauled into Federal Court, to address the issues at bar.

The Plaintiff, *pro se, sui juris,* is calling attention to the Defendant's ongoing disregard for Federal Law and the rights of its inmate population. One of the issues at bar, is whether the Plaintiff will be able to realize his pursuit of justice and set a legal precedence in both pain management and Medication Assisted Addiction Treatment in the KCCJ. Plaintiff claims that the Kent County Correctional Facility Administration can show no compelling governmental interest(s) in their practices and their "policy" is not the least restrictive means to accomplish these illusive interests. This raises a liberty interest.

Plaintiff claims that the "policy" in question holds no statutory authority and is not a promulgated policy, nor has it ever been promulgated by any governmental entity entitled to do so. Neither have the Defendants ever received any guidance from any qualified addiction specialists in their construction and implementation of the policy in question.

Plaintiff claims that the justification of this "policy" is based on nothing more than the Defendant's moral belief that inmates at the Kent County Correctional Facility are there because they have broken the law and should be punished, and their archaic views about drug addiction, and their lack of education or unwillingness to be educated on the subject.

In support of that position he relies on personal observation, as well as the extensive scientific and judicial publications readily available, through [illegible] National Institutes of Health, and "The [illegible] CrimeSolutions.gov which uses rigorous research to inform practitioners and policy makers about **what works** in criminal justice, juvenile justice, and crime victim services."

Plaintiff would like to introduce the following from U.S. National Library of Medicine National Institutes of Health: "Forced withdrawal from methadone maintenance therapy in criminal justice settings: A critical treatment barrier in the United States", lines 17-32 (Exhibit #5), "The World Health Organization classifies methadone as an essential medicine, yet methadone maintenance therapy remains widely unavailable in criminal justice settings throughout the United States. Methadone maintenance therapy is often terminated at the time of incarceration, with inmates forced to withdraw from this evidence-based therapy. We assessed whether these forced withdrawal policies deter opioid-dependent individuals in the community from engaging methadone maintenance therapy in two states that routinely force inmates to withdraw from methadone (*N*=205). Nearly half of all participants reported that concern regarding forced methadone withdrawal during incarceration deterred them engaging methadone maintenance therapy in the community. Participants in the state where more severe methadone withdrawal procedures are used during incarceration were more likely to report concern regarding forced withdrawal as a treatment deterrent. Methadone withdrawal policies in the criminal justice system may be a broader treatment deterrent for opioid-dependent individuals than previously realized. Redressing this treatment barrier is both a health and human rights imperative."

Plaintiff then relies on "Ethical and Human Rights Imperatives to Ensure Medication-Assisted Treatment for Opioid Dependence in Prisons and Pre-trial Detention", which on page four. Lines 16-24 is as follows: LEGAL CONSEQUENCES OF WITHHOLDING TREATMENT: "Upon incarceration, many opioid dependent prisoners are forced to undergo abrupt opioid withdrawal (**both from legally prescribed agonist therapy such as methadone** as well as illicit opioids). Physical and psychological symptoms attendant to withdrawal may

impair capacity to make informed legal decisions, and heighten vulnerability to succumb to police pressure to admit to false charges or confess guilt before having had access to counsel, been before a judge, or been able to digest and understand the potential criminal charges and consequences, in order to avoid detention or to secure release from confinement."

This US Government Publication continues with four full pages addressing the legal theory the Plaintiff will rely on to present his position against the Defendants for the violating his civil rights during his incarcerations.

PROOFS

Plaintiff relies on the Defendant's Exhibits, including but not limited to; Exhibit #18, "Plaintiff's Fist Amended Complaint"; especially paragraph #7, which is as follows: "Contrary to Defendants' belief and argument Plaintiff is not alleging dissatisfaction with medical treatment while incarcerated, but rather is claiming that the Defendants "*illegal policy*" of not allowing "opioid" drugs to be used in the jail violates it's inmate population's and Plaintiff's civil rights; relying on the information contained herein, "Statement of Facts", to detail and support the allegations as to the extent of these violations." Defendants were put on notice as what was at bar in his complaint early on.

Plaintiff also relies on his complaint (Doc. #1) and Defendant's Exhibit #17 (Plaintiff's "First Amended Complaint"), Plaintiff's Exhibit #1, his affirmations in the accompanying motion to this brief, all the above proofs in this brief, the following Legal Standards and the Conclusion to this brief.

DEFENDANT'S FAILURE TO MEET THE BURDEN OF APPLICABLE LEGAL STANDARDS FOR DISMISSAL

When deciding a motion to dismiss, a court must accept "all factual allegations in the complaint as true and construe them in the light most favorable to the nonmoving party." Skilstaf, Inc. v. CVS Caremark Corp., 669 F.3d 1005, 1014 (9th Cir. 2012); OSU Student Alliance v. Ray, 699 F.3d 1053, 1058 (9th Cir. 2012); see also Guillen v. Bank of America Corp., No. 5:10-cv-05825, 2011 WL 4071996 (N.D. Cal. 2011). Moreover, a court must "draw all reasonable inferences in favor of the nonmoving party." Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Lacey v. Maricopa County, 693 F.3d 896, 911 (9th Cir. 2012) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)). A complaint meets this standard when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

The admonishment to construe the plaintiff's claim liberally when evaluating a motion to dismiss does not relieve a plaintiff of his obligation to satisfy federal notice pleading requirements and allege more than bare assertions of legal conclusions. Wright, Miller & Cooper, Federal Practice and Procedure: § 1357 at 596 (1969). "In practice, a complaint . . . must contain either direct or inferential allegations respecting all of the material elements [in order] to sustain a recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984), quoting In Re: Plywood Antitrust Litigation, 655 F.2d 627, 641

(5th Cir. 1981); Wright, Miller & Cooper, Federal Practice and Procedure, § 1216 at 121-23 (1969). **The United States Court of Appeals for the Sixth Circuit** clarified the threshold set for a Rule 12(b)(6) dismissal: "[W]e are not holding the pleader to an impossibly high standard; we recognize the policies behind Rule 8 and the concept of notice pleading. A plaintiff will not be thrown out of court for failing to plead facts in support of every arcane element of his claim" (cite location lost).

It is well established that "[c]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss[.]" Dunn v. Castro, 621 F.3d 1196, 1205n.6 (quoting Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)); Magulta v. Samples, 375 F.3d 1269, 1274-75 (11th Cir. 2004) (when reviewing a motion to dismiss for failure to state a claim, courts should read the complaint in its entirety); 5 Wright & Miller, Federal Practice and Procedure § 1286 (3d ed. 2004); 5B Wright & Miller, Federal Practice and Procedure § 1357 (3d ed. 2004).

Consideration of the Complaint as a whole demonstrates that it meets the requirements established under the Federal Rules. "[A] complaint must contain sufficient factual matter. ... To 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This standard is met where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S.Ct. at 1949 (citing Twombly, 550 U.S. at 556). Here, the Complaint presents a detailed recitation of Plaintiffs' assertions that more than satisfies the pleading requirements. A review of the entire Complaint demonstrates that the Complaint, in no way relies upon mere legal conclusions but contains a

detailed factual account of Defendants' illegal practices which establish their liability for the violations of Plaintiff's civil rights and satisfies the requirements of a 42 USC § 1983 complaint.

PLAINTIFF'S 42 USC § 1983 COMPLAINT SATISFIES THE PLEADING REQUIREMENTS AND SURVIVES DEFENDANT'S REUEST FOR DISMISSAL

Plaintiffs' complaints satisfy the notice pleading requirements under Fed. R. Civ. P. 8(a) for a 42 U.S.C. § 1983 action. A Rule 12(c) motion may be filed "after the pleadings are closed – but early enough not to delay trial." Fed. R. Civ. P. 12(c). The standard of review for a Rule 12(c) motion is the same as that for a motion to dismiss brought under Rule 12(b)(6). Jelovsek v. Bredesen, 545 F.3d 431, 434 **(6th Cir. 2008)**. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (internal citation and quotation marks omitted). To establish facial plausibility, the complaint must provide "'enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].'" Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 556 (2007)). This plausibility standard does not equal a "probability requirement," but requires "more than a sheer possibility that a defendant has acted unlawfully." Iqbal, 129 S. Ct. at 1949 (internal citation omitted). Although legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. Id. at 1950. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id. Under Fed. R. Civ. P. 8(a)(2), a pleading must

contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff's complaint meets theses requirements and proofs.

"[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned accession the defendant unlawfully 'harmed me accusation.'" Iqbal, 129 S. Ct. at 1949 (internal citation and quotation marks omitted). "The touchstone of Rule 8(a)(2) is whether a complaint's statement of facts is adequate to suggest an entitlement to relief under the legal theory invoked and thereby put the defendant on notice of the nature of the plaintiff's claim." In re: Insurance Brokerage Antitrust Litigation, 618 F.3d 300, 319 n. 18 (3d Cir. 2010), citing Twombly, 550 U.S. at 565 n.10.

However, a plaintiff "has no duty to present evidence upon filing a complaint; it must merely plead a short and plain statement of the grounds for jurisdiction, the claim that entitles it to relief, and a demand for relief sought." Wolcott v. Sebelius, 2011 U.S. App. LEXIS 5019 at *34 (5th Cir. 2011) (citing Fed. R. Civ. P. 8(a)).

Even where a complaint is not "a model of the careful drafter's art, under the Federal Rules of Civil Procedure, a complaint need not pin [a] plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible 'short and plain' statement of the plaintiff's claim, not an exposition of his legal argument." Skinner v. Switzer, 131 S.Ct. 1289, 179 L. Ed. 2d 233, 242 (2011) (reversing and remanding dismissal of plaintiff's § 1983 case), referencing 5 C. Wright & A. Miller, Federal Practice & Procedure § 1219, pp. 277-278 (3d ed. 2004 and Supp. 2010).

In evaluating the sufficiency of a complaint, the place to begin is "by taking note of the elements [the] plaintiff must plead to state [a] claim." Iqbal, 129 S. Ct. at 1947 (internal citation

omitted). Some claims necessarily will demand relatively more factual detail to satisfy this standard, while others will require less. Arista Records, 604 F.3d at 120 (stating that the Supreme Court's recent pleading decisions "require factual amplification [where] needed to render a claim plausible") (internal quotation marks omitted) (alteration in original).

Here, Plaintiffs brought this action pursuant to 42 U.S.C. § 1983. The elements of a claim under 42 U.S.C. § 1983 are (1) the violation of (a) right(s) secured by the federal Constitution or federal law and (2) the violation was committed by a person acting under color of state law. Brown v. Matauszak, 2011 U.S. App. LEXIS 2011, 2011 Fed. App. 0060N at *10 (**6th Cir. 2011**), citing West v. Atkins, 487 U.S. 42, 48 (1988).

Plaintiff alleged enough facts in his complaint (Doc. #1) to adequately state all of the elements of a 42 U.S.C. § 1983 claim and to put Defendants on notice of the that it's policy prohibited it's contacted inmate medical provider, Corizon Health Inc., to evaluate the Plaintiff to determine if he was required to continue receiving his pain medication upon incarceration or whether the medication was not required in jail and then would be allowed to prescribe the medication in gradual decreasing doses until cessation, to avoid withdrawal symptoms, and risk to the Plaintiff's life, thus avoiding the subjection of the Plaintiff to a violation of his federally protected civil rights; of which include, but are not limited to , the protection against; "cruel and unusual punishment", "deliberate indifference to (a)severe medical need(s)", "wanton infliction of pain and suffering", violation of "equal protection" and "due process" rights, denial of "adequate medical care", and any other violations that may apply; even possibly death ("life and liberty"). In case the Defendant's allege that these medical decisions were made *in abstencia*, Plaintiff is prepared with Federal Case Law to refute their defense on those grounds.

Pleadings in this case are being filed by the Plaintiff, pro se, wherein pleadings are to be considered **without** regard to technicalities. Pro se, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995), also see In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)." In Puckett v. Cox, it was held that a pro se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 **Sixth Circuit USCA**). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice."

States often attempt to use mootness to their advantage, litigating to judgment against weaker claims brought by pro se inmates, while avoiding stronger claims backed by experienced counsel. This gamesmanship deprives courts of the benefit of "sharply presented issues" with "self-interested parties vigorously advocating opposing positions." Grant ex rel. Family Eldercare v Gilbert, 324 F.3d 383, 390 (5thCir. 2003). It also gives States the benefit of favorable precedent obtained in poorly litigated cases, while leaving them free in mooted cases to "resume the complained of activity without fear of flouting the mandate of a court." Sossamon, 560 F.3d at 324. In short, it allows States to pick and choose their opponents

Plaintiff relies on the following Federal Rules of Evidence to admit the contained exhibits: Rule 301 Presumptions in Civil Cases Generally, Rule 402 General Admissibility of Relevant Evidence, Rule 702(a)(b) and (c), Testimony by Expert Witnesses, Rule 902(5),

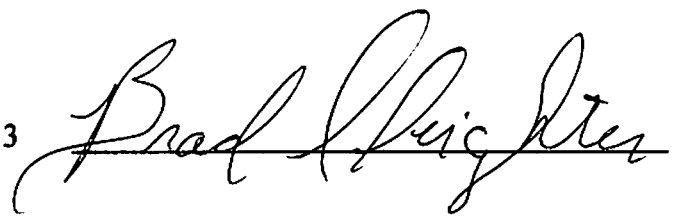
Evidence That Is Self-Authenticating and Rule 1001(c) A "photograph" means a photographic image or its equivalent stored in any form.

Plaintiff, if justice so requires, will seek leave of the Court, to file a "Second Amended Complaint" in compliance with FRCP 15a(2) since the Defendants continue to waste the Court's time and resources pursuing "defenses" of non-existent "claims" allegedly made in his complaint; attempting to wear him down, catch him in a procedural error, or just be able to use legal gamesmanship and experience in these proceedings to outwit and moot and/or have dismissed Plaintiff's meritorious claims, as a pro se litigant; therefore, justice would so require leave of Court to amend his complaint to put the Defendants back on tract and address the allegations against them and halt their pursuit in defending a position that is not coming to bar.

CONCLUSION

Defendants have fallen far short of meeting the applicable Federal legal standard and burden of proof to realize either summary judgment in their favor and/or dismissal of Plaintiff's Complaint. In fact, all said and done, based on the actual simplicity of the Plaintiff's Complaint and the undisputed "material" facts, the Court could conclude that a jury would easily find in favor of the Plaintiff and that he is entitled to summary judgment in the interest of justice; thus avoiding any further undue burden on this Court and Plaintiff; ordering any other action(s) as justice sees fit to address the violation(s) of his civil rights and bring this litigation to resolution. Therefore, the Plaintiff respectfully requests, at a minimum, that the Honorable Court deny Defendant's "Motion for Summary Judgment" and dismissal.

It is a sad commentary on our state judicial system, when the Plaintiff, has to drag the Defendants into Federal Court for the vindication of his suffering; especially when the Federal Government has spent millions of dollars and utilized the most advanced research techniques to advance justice and make the information available to inferior governmental agencies, and that the Defendants somehow think they exist outside the *status quo*. Hopefully, if this litigation does nothing else, it will draw the Defendants attention to the abundant resources our Federal Government provides, to law enforcement. It should educate the Defendants.

Respectfully Submitted: August 27, 2013 

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[i] Inmates of Milwaukee County Jail v. Petersen, 353 F.Supp. 1157, 1160 (E.D.Wisc.1973); Collins v. Schoonfield, *supra*, 344 F.Supp. at 265. *Cf.* Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944).

[ii] *See also* Rhem v. Malcolm, *supra*, 371 F. Supp. at 622, 623; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F. Supp. at 686; Conklin v. Hancock, 334 F.Supp. 1119, 1121 (D.N.H.1971); Seale v. Manson, 326 F.Supp. 1375, 1379 (D. Conn.1971).

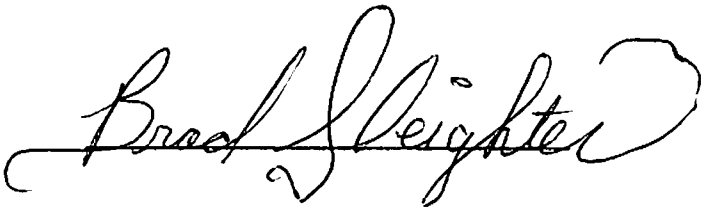
[iii] Brenneman v. Madigan, *supra*, 343 F.Supp. at 138, citing Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 5 L.Ed. 2d 231 (1960)

[iv] *See also* Rhem v. Malcolm, *supra*, 371 F. Supp. at 622; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F.Supp. at 686; Smith v. Sampson, 349 F.Supp. 268, 271 (D.N.H.1972); Collins v. Schoonfield, *supra*, 344 F.Supp. at 265.

[v] Rhem v. Malcolm, *supra*, 371 F.Supp. at 623; Inmates of Suffolk County Jail v. Eisenstadt, *supra*, 360 F.Supp. at 685, 686; Smith v. Sampson, *supra*, 349 F.Supp. at 271, 272; Brenneman v. Madigan, *supra*, 343 F.Supp. at 137; Hamilton v. Love, *supra*, 328 F.Supp. at 1191

CERTIFICATE OF SERVICE

I, the Plaintiff, certify that I have delivered to the Defendant's Attorney of record, Varnumn LLP, a true and correct copy of this Brief by electronic means through the internet to the email address of record, pigreenwald@varnumlaw.com and also to the U.S. District Court for the Western District of Michigan on this 30th, day of August, 2013



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